HSBC

VIA ELECTRONIC MAIL

December 16, 2005

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Advance Notice of Proposed Rulemaking
Regulation Z Open-end Credit Rules
Docket No. R-1217

Ladies and Gentlemen:

HSBC Retail Services submits this comment letter in response to the second Advance Notice of Proposed Rulemaking ("ANPR") issued by the Board of Governors of the Federal Reserve System (the "Board"), regarding the commencement of a review of the open-end (revolving) credit rules of the Board's Regulation Z ("Reg Z"), which implements the Truth in Lending Act ("TILA"). HSBC Retail Services, an HSBC North America Holdings Inc. ("HNAH")[1] business, issues private label credit cards through HSBC Bank Nevada, N.A.

HSBC Retail Services commends the Board for combining this second ANPR relating to changes required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Bankruptcy Act") with its earlier ANPR regarding the open-end credit rules of Reg Z and appreciates this opportunity to supplement our earlier comments. As an overall matter, we are concerned that many of the changes to TILA effected by the Bankruptcy Act may not be appropriate to certain features of private label credit card products, credit plans and credit promotions. Thus, we suggest that in certain circumstances it may be beneficial for both consumers and the industry for the Board to provide limited exceptions from the requirements of the Bankruptcy Act TILA amendments where they do not fit the situation or would otherwise risk decreasing the clarity of information provided to consumers.

The promotional credit plans ("Plans") that often are available in connection with private label credit cards present unique challenges in calculating repayment periods for those accounts. Examples of such Plans include the following:

[1] HNAH is a registered financial holding company with various U.S. banking and non-banking subsidiaries that engage in revolving consumer finance transactions.

1. Same as Cash – A Same as Cash Plan ("SAC") is a purchase which accrues interest, but the interest is not assessed if the accountholder pays the principal amount of the purchase in full within a set period of time (e.g., 90 days, six months, one year, each, a "promotional period"). If the purchase is not paid in full within the promotional period, the accrued interest on that purchase for that period is assessed as a lump sum at the end of the promotional period. A SAC may or may not require a minimum payment to be made on the purchase. Any minimum payment amount for a SAC may be calculated separately from the minimum payment for the account as a whole, and added as a component of the total minimum payment.

2. No Payment, No Interest – A No Payment, No Interest Plan ("No-No") is as described. No payment is required and no interest accrues on a purchase for the term of the Plan. After the expiration of the Plan, the Plan balance is added to the balance of the account and treated as part of the account balance for minimum payment purposes.

3. Reduced Interest – A lower APR than that which applies to the account as a whole is applied to purchases under the Reduced Interest Plan. That lower APR can affect the calculation of the minimum payment, depending on the minimum payment calculation method for the account.

4. Equal Payment – Usually used together with Reduced Interest (although it can be used in conjunction with a SAC as well), an Equal Payment Plan requests fixed equal payments on the purchases made under the plan for the term of the Plan. The equal payments may or may not be calculated to completely amortize the Plan balance during the promotional period. If not fully amortized, the remaining balance of the Plan is added to the balance of the account at the end of the promotional period.

5. Reduced Payment – A Reduced Payment Plan is almost always used together with a SAC or a Reduced Interest Plan. Self descriptive, this Plan calculates a lower minimum payment for purchases made under it than would be required if the purchases were made under the regular terms of the account. The minimum payment calculated for this Plan is added to the minimum payment(s) calculated for regular account purchases and other Plans to obtain the total minimum payment for the account.

Each type of Plan affects the repayment pattern of the account in a unique way, and consumers may carry multiple Plans of different types on a single account. The interaction of the various Plans on a single account impacts the calculation of the repayment period. At the same time, we find that a very low percentage of accountholders make only the minimum payment for any extended period of time. As a result, we would urge the Board to consider limited exemptions for certain retail plans, to avoid diminishing other disclosures on the periodic statement, which may have far more relevance to these accountholders than their repayment period.

Scope of the Review

Question 59. Are there certain types of transactions or accounts for which the minimum payment disclosures are not appropriate? For example, should the Board consider a complete exemption from the minimum payment disclosures for open-end accounts or extensions of credit under an open-end plan if there is a fixed repayment period, such as with certain types of HELOCs? Alternatively, for these products, should the Board provide an exemption from disclosing the hypothetical example and the toll-free telephone number on periodic statements, but still require a standardized warning indicating that making only the minimum payment will increase the interest the consumer pays?

We suggest that the Board consider exempting from the minimum payment disclosures balances resulting from Plans that either (1) require no minimum payment or (2) contain reduced minimum payments during a promotional period. Regardless of whether reduced payments allowed by such Plans pay off a consumer's account balance, their existence completely changes the minimum payment calculation for the account, rendering it completely atypical. When the entire balance of an account is associated with this type of Plan, we suggest that Regulation Z require no minimum payment disclosures until the promotional period terminates, at which time, if the consumer has not paid the entire amount in full, the account balance would be transferred to standard account terms and the new disclosure requirements would go into effect. Thus, once the account contained a balance on a standard payment plan, the minimum payment disclosures would have relevance and appear on the periodic statement.

Question 60. Should the Board consider an exemption that would permit creditors to omit the minimum payment disclosures from periodic statements for certain accountholders, regardless of the type of account; for example, an exemption for consumers who typically 1) do not revolve balances; or (2) make monthly payments that regularly exceed the minimum?

We would strongly urge the Board to consider an exemption to omit the minimum payment disclosures from periodic statements for consumers who typically do not revolve and/or regularly exceed the minimum payment amount. In our consumer private label credit card portfolios, approximately 2.5% of consumers pay only the minimum payment during any consecutive six month period and approximately 5.0% of customers make only the minimum payment during any consecutive three month period. Requiring disclosures on periodic statements for the 95 to 97.5% of the population for whom they are not pertinent would add unnecessary expense to the statement production process, taking up system resources to produce the calculations and adding pages to statements. Moreover, the new disclosures would risk pushing other important disclosures onto subsequent statement pages.

For these reasons, we would urge the Board to consider limiting the disclosures to only those persons to whom they are relevant. We believe that it would be in the interests of creditors and consumers alike for the Board to require that the minimum payment disclosure be made only on periodic statements for cardholders who have paid only the minimum payment for three consecutive months and who have a balance of more than $300. Such a requirement would mean that the minimum payment disclosure would be provided to cardholders who regularly make only the minimum payment on a significant balance.

Question 61. Some credit unions and retailers offer open-end credit plans that also allow extensions of credit that are structured like closed-end loans with fixed repayment periods and payments amounts, such as loans to finance the purchase of motor vehicles or other ''big-ticket items.'' How should the minimum payment disclosures be implemented for such credit plans?

We would suggest that Equal Payment Plans, as described above, should be excluded from the minimum payment disclosures. Equal Payment Plans typically have minimum payments that are much higher than a standard open-end credit plan minimum payment, and are typically structured to pay off the balance on the plan in full within a fixed period of time. Therefore, we would ask the Board to exclude such programs from the minimum payment warning disclosure, the payment example and the toll-free number. At a minimum we would ask the Board to do so if the Plan is structured to repay the balance within the term of the Equal Payment Plan.

Question 62. The Bankruptcy Act authorizes the Board to periodically adjust the APR used in the hypothetical example and to recalculate the repayment period accordingly. Currently, the repayment periods for the statutory examples are based on a 17 percent APR. Nonetheless, according to data collected by the Board, the average APR charged by commercial banks on credit card plans in May 2005 was 12.76 percent. If only accounts that were assessed interest are considered, the average APR rises to 14.81 percent. *See* Board of Governors of the Federal Reserve Board, *Statistical Release G. 19*, (July 2005). Should the Board adjust the 17 percent APR used in the statutory example? If so, what criteria should the Board use in making the adjustment?

Because the range of APRs applicable to revolving consumer credit plans is wide, we would suggest that the 17% figure in the Bankruptcy Act is as useful and representative as any other APR for purposes of providing examples.

Question 64. The statutory examples refer to the stated minimum payment percentages of 2 percent or 5 percent, as being ''typical.'' The term ''typical'' could convey to some consumers that the percentage used is merely an example, and is not based on the consumer's actual account terms. But the term ''typical'' might be perceived by other consumers as indicating that the stated percentage is an industry norm that they should use to compare the terms of their account to other accounts. Should the hypothetical example refer to the minimum payment percentage as

''typical,'' and if not, how should the disclosure convey to consumers that the example does not represent their actual account terms?

We urge the Board to consider removing the word "typical" from the minimum payment disclosure. As the Board recognizes, in today's vast and highly competitive market, there is no minimum payment percentage that accurately could be termed "typical." The actual methods used to calculate payments vary greatly from institution to institution. Therefore, using the word "typical" in the disclosure could lead to unnecessary consumer confusion.

Question 65. In developing the formulas used to estimate repayment periods, should the Board use the three assumptions stated above concerning the balance calculation method, grace period, and residual interest? If not, what assumptions should be used, and why? How Should the Minimum Payment Requirement and APR Information Be Used in Estimating the Repayment Period?

The Board's proposed assumptions seem reasonable. The repayment periods for the tables to be developed by the Board are an illustration only. Because of the widely varying credit terms available, it does not appear that any general call-in number could truly give an approximation of an exact period for an individual consumer. With this in mind, the purpose should be to illustrate to a consumer that making the minimum payment will increase her repayment period, and the proposed assumptions serve this purpose.

We also urge the Board to avoid imposing any requirement on creditors to provide information to be used in connection with disclosures generated by the table developed by the Board. We believe that all information obtained in connection with the disclosures generated by the table should be provided by the consumer or assumed by the Board. Any requirement that creditors provide account-specific information would impose significant costs on creditors that are not justified by the purpose behind the minimum payment disclosure – to provide consumers with an *estimate* of the repayment period.

Question 66. Comment is specifically solicited on whether the Board should select ''typical'' minimum payment formulas for various types of accounts. If so, how should the Board determine the formula for each type of account? Are there other approaches the Board should consider?

We do not believe that the Board will be able to identify "typical" minimum payment formulas for various types of accounts, due to the complexity of the market. As we believe that the general repayment estimates that the Board would provide would be instructive only, the variations in actual repayment formulas would not be significant for the Board's purposes. We believe it would be reasonable for the Board to assume a minimum payment of 1% of the principal balance plus any finance charges assessed during the period, with a minimum payment floor of $15.

Question 67. If the Board selects a ''typical'' minimum payment formula for

general-purpose credit cards, would it be appropriate to assume the minimum payment is based on one percent of the outstanding balance plus finance charges? What are typical minimum payment formulas for open-end products other than general-purpose credit cards (such as retail credit cards, HELOCs, and other lines of credit)?

One percent of the outstanding balance plus finance charges could be used to represent a "typical" credit card repayment formula.

Question 68. Should creditors have the option of programming their systems to calculate the estimated repayment period using the creditor's actual payment formula in lieu of a ''typical'' minimum payment formula assumed by the Board? Should creditors be required to do so? What would be the additional cost of compliance for creditors if they must use their actual minimum payment formula? Would the cost be outweighed by the benefit in improving the accuracy of the repayment estimates?

We do not recommend that the Board require creditors to produce an actual payment period on every single account. Any incremental benefit of an estimate based on one set of assumptions, versus a second set of assumptions, would not outweigh the significant operational costs and, absent adequate safe harbors, the litigation risks that such a requirement could produce. The cost of programming our system to make a repayment period calculation for each of our millions of customers would be substantial. Moreover, each time such a calculation would be made for these millions of accounts on a monthly basis, the processing time would carry a cost.

Instead, we suggest that the Board should adopt regulations that permit, but do not require, creditors to provide an estimate for individual cardholders. We believe Congress intended to give creditors such a choice, but did not intend to impose such a requirement. Creditors may conclude that the costs of providing an "actual" repayment period calculation are outweighed by the benefit of providing the alternative minimum payment disclosure on the reverse side of the periodic statement.

Finally, we believe it critical for the Board to provide a safe harbor for creditors who choose to provide an "actual" repayment period Without a safe harbor, creditors are likely to face litigation challenging the assumptions made by creditors. Without a safe harbor, creditors are unlikely, therefore, to choose to provide an "actual" repayment period rather than an estimate based on the Board's tables. The safe harbor should also allow for tolerances of minor errors.

Question 69. Negative amortization can occur if the required minimum payment is less than the total finance charges and other fees imposed during the billing cycle. As discussed above, several major credit card issuers have moved toward minimum payment requirements that prevent prolonged negative amortization. But some creditors may use a minimum payment formula that allows negative amortization (such as by requiring a payment of 2% of the outstanding balance, regardless of the

finance charges or fees incurred). Should the Board use a formula for calculating repayment periods that assumes a ''typical'' minimum payment that does not result in negative amortization? If so, should the Board permit or require creditors to use a different formula to estimate the repayment period if the creditor's actual minimum payment requirement allows negative amortization? What guidance should the Board provide on how creditors disclose the repayment period in instances where negative amortization occurs?

Negative amortization presents a unique challenge with respect to these disclosures, and we would suggest that the Board should use a minimum payment formula (such as the formula that we recommend above) that would not allow negative amortization.

Question 70. **What proportion of credit card accounts accrue finance charges at more than one periodic rate? Are account balances typically distributed in a particular manner, for example, with the greater proportion of the balance accruing finance charges at the higher rate or the lower rate?**

In our retail credit card portfolio approximately 1.3% of accounts accrue finance charges at more than one periodic rate. Accounts with multiple rates typically have the larger portion of the balance on the lower rate. This proportional breakdown is related to the availability of Reduced Rate Plans on large ticket items for private label credit card programs.

Question 71. The statute's hypothetical examples assume that a single APR applies to a single balance. For accounts that have multiple APRs, would it be appropriate to calculate an estimated repayment period using a single APR? If so, which APR for the account should be used in calculating the estimate?

Since the hypothetical examples are illustrative only, we suggest that using the non-promotional purchase APR applicable to an account balance to calculate the estimated repayment period would be appropriate.

Question 72. Instead of using a single APR, should the Board adopt a formula that uses multiple APRs but incorporates assumptions about how those APRs should be weighted? Should consumers receive an estimated repayment period using the assumption that the lowest APR applies to the entire balance and a second estimate based on application of the highest APR; this would provide consumers with a range for the estimated repayment period instead of a single answer. Are there other ways to account for multiple APRs in estimating the repayment period?

We are concerned that adopting a formula incorporating multiple APRs would result in systems that would be too complex for a touch tone telephone system, resulting in customer confusion. Rather, if the purpose of the repayment calculation is to illustrate the extent to which making only the minimum payment could extend a repayment period, using only the non-promotional purchase APR applicable to an account would be simplest course and provide the most impact.

Question 73. One approach to considering multiple APRs could be to require creditors to disclose on periodic statements the portion of the ending balance that is subject to each APR for the account. Consumers could provide this information when using the toll-free telephone number to request an estimated repayment period that incorporates all the APRs that apply. What would be the additional compliance cost for creditors if, in connection with implementing the minimum payment disclosures, creditors were required to disclose on periodic statements the portion of the ending balance subject to each APR for the account?

We currently provide the ending balance that is subject to each APR on the billing statements for all private label credit card accounts; therefore, there would be no additional cost to implement such a requirement for our retail credit card portfolio.

Question 74. As an alternative to disclosing more complete APR information on periodic statements, creditors could program their systems to calculate a consumer's repayment period based on the APRs applicable to the consumer's account balance. Should this be an option or should creditors be required to do so? What would be the additional cost of compliance for creditors if this was required? Would the cost be outweighed by the benefit in improving the accuracy of the repayment estimates?

The added programming costs would not be justified by the incremental benefit provided by this option.

Question 75. If multiple APRs are used, assumptions must be made about how consumers' payments are allocated to different balances. Should it be assumed for purposes of the toll-free telephone number that payments always are allocated first to the balance carrying the lowest APR?

For purposes of estimates made over the toll free number, we would agree that it is reasonable to assume that balances will be applied to lower APR balances first.

Question 76. What key assumptions, if any, should be disclosed to consumers in connection with the estimated repayment period? When and how should these key assumptions be disclosed? Should some or all of these assumptions be disclosed on the periodic statement or should they be provided orally when the consumer uses the toll-free telephone number? Should the Board issue model clauses for these disclosures?

The disclosures should contain the information that certain assumptions were made in connection with the estimated repayment period. We would suggest that the Board allow the creditor the option of communicating this information on the billing statement or orally and not require specific language regarding these assumptions be used. The Board could provide a general model disclosure that the creditor could use either in written or oral format in order to indicate to the customer that the numbers provided are truly estimates and that there are multiple factors, such as timing of payments and variable APRs that would impact the actual number of months to repay the account balance.

Question 77. What standards should be used in determining whether a creditor has accurately provided the ''actual number of months'' to repay the outstanding balance? Should the Board consider any safe harbors? For example, should the Board deem that a creditor has provided an ''actual'' repayment period if the creditor's calculation is based on certain account terms identified by the Board (such as the actual balance calculation method, payment allocation method, all applicable APRs, and the creditor's actual minimum payment formula)? With respect to other terms that affect the repayment calculation, should creditors be permitted to use the assumptions specified by the Board, even if those assumptions do not match the terms on the consumer's account?

We would agree with the approach of specifying the input and giving safe harbor to the output based on that input. Any calculation of an account payoff period based on actual account data assumes 1) that the consumer makes only the minimum payment for the rest of the time the account carries a balance, 2) that the consumer makes no additional purchases, 3) that the consumer is never late with her payments, and 4) that the consumer never incurs any other fees, such as any fees associated with making an electronic payment. All of these assumptions are atypical of actual customer behavior, calling into question whether any repayment period result based on them could correctly be termed "actual." Therefore, we would support the Board's hypothetical safe harbor of deeming a repayment period "actual" as long as the inputs are accurate.

Question 78. Should the Board adopt a tolerance for error in disclosing the actual repayment periods? If so, what should the tolerance be?

For the reasons noted above, we do not believe that any tolerance would be adequate to deem a repayment period "actual," and therefore would suggest that the approach listed above (question 77) would be more appropriate.

Question 79. Is information about the ''actual number of months'' to repay readily available to creditors based on current accounting systems, or would new systems need to be developed? What would be the costs of developing new systems to provide the ''actual number of months'' to repay?

We have the data available to calculate the "actual number of months," but would need to develop processing systems to create these calculations.

Question 81. Are any creditors currently offering Web-based calculation tools that permit consumers to obtain estimates of repayment periods? If so, how are these calculation tools typically structured; what information is typically requested from consumers, and what assumptions are made in estimating the repayment period?

HNAH provides the "Your Money Counts" financial education website, which contains a calculator to allow consumers to calculate how much of a monthly payment they *should* make if they want to pay off a credit card balance within a desired number of months (see, http://www.yourmoneycounts.com/ymc/tools/calculators). That calculator asks for specific detailed input from the consumer, including current balance, current monthly payment, APR, the consumer's payoff goal in months, the amount of new charges the consumer typically makes per month, any annual fee applicable to the account, and any major purchases the consumer anticipates making together with the approximate month they anticipate making them. Based on that input, the calculator provides the consumer with a graph showing how many months it will take to pay off the account making their current payment and how much their payment would have to be in order to pay it off within their target period. It also provides more detailed information, including an amortization chart. This calculator uses a fixed payment amount each month provided by the consumer rather than a declining minimum payment based on percentage of the balance and assumes that the entire account balance is subject to the same APR. It does not account for credit Plans which would significantly alter the repayment period. We believe that this type of calculator is typical of the web based calculators available, but would not be adequate and/or workable for the estimates required under the Bankruptcy Act amendments. Moreover, as it does not contain enough variable fields, it could not be used for calculating an estimated "actual" repayment period.

Question 82. Are there alternative ways the Board should consider for creditors to provide repayment periods other than through toll-free telephone numbers? For example, the Board could encourage creditors to disclose the repayment estimate or actual number of months to repay on the periodic statement; these creditors could be exempted from the requirement to maintain a toll-free telephone number. This would simplify the process for consumers and possibly for creditors as well. What difficulties would creditors have in disclosing the repayment estimate or actual repayment period on the periodic statement?

As noted previously, we do not believe that the incremental benefit that could be provided by an estimated "actual" repayment period disclosure on a periodic statement would outweigh the significant programming costs. Moreover, such a disclosure would take up additional space on the periodic statement is at a premium, and additional pages lead to additional costs. However, as an alternative, the board could allow creditors to provide a table in the initial disclosure showing repayment periods under the terms of the account for various account balances. Such a table would be as illustrative as a toll free number, and would not have the associated costs.

Question 83. What guidance should the Board provide on the location or format of the minimum payment disclosures? Is a minimum type size requirement appropriate?

As the Board has already suggested by combining this ANPR with the December 2004 ANPR, the location and format of the disclosures required by the Bankruptcy Act amendments should be determined together with the locations and formats of all other required disclosures under TILA. We commend this approach. We would caution against any requirements that could diminish the prominence of other important disclosures that may have the most relevance for consumers. Implementing type size requirements may impact the visibility of other required disclosures, and force additional, costly, statement pages.

Question 84. What model forms or clauses should the Board consider?

We believe that model language regarding the assumptions underlying the Board generated repayment period calculation and the limitations of all of the various repayment period calculations required or suggested by the Bankruptcy Act amendments would be appropriate.

Question 85. The Bankruptcy Act requires the Board to issue model disclosures and rules that provide guidance on satisfying the clear and conspicuous requirement for introductory rate disclosures. The Board is directed to adopt standards that can be implemented in a manner that results disclosures that are ''reasonably understandable and designed to call attention to the nature and significance of the information.'' What guidance should the Board provide on satisfying the clear and conspicuous requirement? Should the Board impose format requirements, such as a minimum font size? Are there other requirements the Board should consider? What model disclosures should the Board issue?

See the answer to Question 83 above. The "clear and conspicuous" requirement should be implemented as part of a consideration of all terms and disclosures required to be clear and conspicuous.

Question 86. Credit card issuers must use the term ''introductory'' in immediate proximity to *each* mention of the introductory APR. What guidance, if any, should the Board provide in interpreting the ''immediate proximity'' requirement? Is it sufficient for the term ''introductory'' to immediately precede or follow the APR (such as ''Introductory APR 3.9%'' or ''3.9% APR introductory rate'')?

Because there are significant differences between a Reduced Interest Credit Plan and an introductory interest rate for an entire account, we urge the Board to exclude Reduced Interest Credit Plans from the introductory rate disclosure requirements. As noted above, private label credit card issuers periodically offer Reduced Interest Credit Plans. These promotions are usually offered on specified purchases during specified time periods. They are typically not offered as part of a solicitation, but are advertised by the merchant as a financing option available on a particular type of purchase (e.g., "a widescreen television") or for a particular size of purchase (e.g., "all purchase over $500"). They are not generally advertised as features of the credit card, applicable to all purchases for a particular period of time. Any purchases made on the account that are not under the Reduced Interest Credit Plan incur finance charges at the regular rate of interest. Full disclosures are typically given to consumers at the time of making a purchase on such a Plan, which include the "go-to" APR. Additionally, they are usually marketed as "3.9%

for 6 months" and consumers typically ask about the "go-to" rate at time of purchase.

Question 87. The expiration date and go-to APR must be closely proximate to the ''first mention'' of the temporary introductory APR. The introductory APR might, however, appear several times on the first page of a solicitation letter. What standards should the Board use to identify one APR in particular the ''first mention'' (such as the APR using the largest font size, or the one located highest on the page)?

We believe that the "first mention" of the introductory APR is that which is the located highest on the page that has the initial text of the solicitation letter. Creditors would be obligated to disclose the expiration date and the go-to APR in a manner "closely proximate" to this "first mention" of the introductory APR, a requirement that should be satisfied by disclosing the expiration date and go-to APR in the text of the solicitation letter (perhaps in the first paragraph of the letter).

Question 88. Direct-mail offers often include several documents sent in a single envelope. Should the Board seek to identify one document as the ''first mention'' of the temporary APR? Or should each document be considered a separate solicitation, so that all documents mentioning the introductory APR contain the required disclosures?

We urge the Board to identify one document as the "first mention" of the temporary APR. If a creditor discloses the expiration date and go-to APR in the text of the solicitation letter, this will sufficiently inform the consumer of the terms of the offer. It is, after all, the solicitation letter that consumers are most likely to read if they are interested in responding to an offer, and we see little benefit (and considerable compliance burdens) to re-disclosing the expiration date and go-to APR on additional documents.

Question 89. The expiration date for the temporary APR and the go-to APR also must be in a ''prominent location'' that is ''closely proximate'' to the temporary APR. What guidance, if any, should the Board provide on this requirement?

See the answer to Questions 86 and 87.

Question 90. Some credit card issuers' offers list several possible permanent APRs, and consumer qualifications for any particular rate is subsequently determined by information gathered as part of the application process. What guidance should the Board provide on how to disclose the ''go-to'' APR in the solicitation when the permanent APR is set using risk-based pricing? Should all the possible rates be listed, or should a range of rates be permissible, indicating the rate will be determined based on creditworthiness?

Where the account is subject to a range of potential go-to APRs, we believe the creditor should have the option to disclose each potential go-to APR or the range of potential go-to APRs.

Question 91. Regulation Z currently provides that if the initial APR may increase upon the occurrence of one or more specific events, such as a late payment, the issuer must disclose in the Schumer box both the initial rate and the increased penalty rate. The specific event or events that may trigger the penalty rate must be disclosed outside of the Schumer box, with an asterisk or other means used to direct the consumer to this additional information. The Bankruptcy Act requires that a general description of the circumstances that may result in revocation of the temporary rate must be disclosed ''in prominent manner'' on the application or solicitation. What additional rules should be considered by the Board to ensure that creditors' disclosures comply with the Bankruptcy Act amendments? Is additional guidance needed on what constitutes a ''general description'' of the circumstances that may result in revocation of the temporary APR? If so, what should that guidance say?

We believe there is no need for additional guidance or regulation, as Regulation Z provides sufficient guidance regarding the revocation of a promotional rate.

Question 92. The introductory rate disclosures required by the Bankruptcy Act apply to applications and solicitations whether sent by direct or provided electronically. To what extent should the guidance for applications and solicitations provided by direct mail differ from the guidance for those provided electronically?

We see no reason for a different standard.

Question 93. Although the Bankruptcy Act provisions concerning Internet offers refer to credit card solicitations (where no application is required), this may be interpreted to also include applications. Is there any reason for treating Internet applications differently than Internet solicitations?

We do not believe that Internet applications should be treated differently from Internet solicitations.

Question 94. What guidance should the Board provide on how solicitation (and application) disclosures may be made clearly and conspicuously using the Internet? What model disclosures, if any, should the Board provide?

See the answer to Question 83 above. While we have no specific recommendations, we do think that these clear and conspicuous requirements should be considered together with all of the other clear and conspicuous requirements that the Board is reviewing as part of this ANPR and its earlier ANPR.

Question 95. What guidance should the Board provide regarding when disclosures are ''readily accessible to consumers in close proximity'' to a solicitation that is

made on the Internet? The 2001 interim final rules stated that a consumer must be able to access the disclosures at the time the application or solicitation reply form is made available electronically. The interim rules provided flexibility in satisfying this requirement. For example, a card issuer could provide on the application (or reply form) a link to disclosures provided elsewhere, as long as consumers cannot bypass the disclosures before submitting the application or reply form. Alternatively, if a link to the disclosures was not used, the electronic application or reply form could clearly and conspicuously refer to the fact that rate, fee, and other cost information either precedes or follows the electronic application or reply form. Or the disclosures could automatically appear on the screen when the application or reply form appears. Is additional or different guidance needed from the guidance in the 2001 interim final rules?

We believe that these 2001 interim final rules are clear and fair and do not recommend any additions or changes.

Question 96. What guidance should the Board provide regarding what it means for the disclosures to be ''updated regularly to reflect the current policies, terms, and fee amounts?'' Is the guidance in the 2001 interim rules, suggesting a 30-day standard, appropriate?

We believe that a 60-day standard is more fair and workable than a 30-day standard, and is in line with the schedules for making these types of changes that creditors have implemented for paper disclosures.

Question 97. Under what circumstances, if any, would the ''date on which the payment is due'' be different from the ''earliest date on which a late payment fee may be charged?''

For most of our private label credit card portfolio, the date on which the payment is due is the same as the earliest date on which a late payment fee may be charged. If a customer's payment is not posted to the system on or before the due date, a late fee is assessed to the account during systemic nightly batch processing on the payment due date.

Question 98. Is additional guidance needed on how these disclosures may be made in a clear and conspicuous manner on periodic statements? Should the Board consider particular format requirements, such as requiring the late payment fee to be disclosed in close proximity to the payment due date (or the earliest date on which a late payment fee may be charged, if different)? What model disclosures, if any, should the Board provide with respect to these disclosures?

As we indicated in our response to Question 83 above, any guidance provided by the Board in relation to a "clear and conspicuous" requirement should be coordinated with guidance provided on clear and conspicuous requirements in general. Implementing type size requirements may impact the conspicuousness of other required disclosures, force some onto additional pages, which would both make them less conspicuous and add significant cost.

Question 99. The December 2004 ANPR requested comment on whether the Board should issue a rule requiring creditors to credit payments as of the date they are received, regardless of what time during the day they are received. Currently, under Regulation Z, creditors may establish reasonable cut-off hours; if the creditor receives a payment after that time (such as 2 pm), then the creditor is not required to credit the payment as of that date. If the Board continues to allow creditors to establish reasonable cut-off hours, should the cut-off hour be disclosed on each periodic statement in close proximity to the payment due date?

We would recommend that the Board continue to allow creditors to establish reasonable cut-off hours without the requirement of additional disclosure. Many creditors already make such a disclosure voluntarily, and in any event such a disclosure would have minimal impact to consumers trying to "time" their payment, since even in the electronic payment environment, that is an inexact science at best.

Question 100. Failure to make a payment on or before the required due date commonly triggers an increased APR in addition to a late payment fee. As a part of the Regulation Z review, should the Board consider requiring that any increased rate that would apply to outstanding balances accompany the late payment fee disclosure?

We would not recommend that the Board consider requiring disclosure of any increased rate that would apply to outstanding balances along with the late fee amount. In many cases, an increased APR is triggered only by multiple late payments, which would add necessary complexity to such a disclosure. In addition, these disclosures are already provided to consumers in their solicitations, applications, and initial disclosures, as required by 12 CFR §226.5a(b)(1) (Official Staff Comment 226.5a(b)(1) – 7) and 12 CFR §226.6(a)(2) (Official Staff Comment 226.6(a)(2) – 11).

Question 106. What issues should the Board consider in providing guidance on when an account ''expires?'' For example, card issuers typically place an expiration date on the credit card. Should this date be considered the expiration date for the account?

We do not place an expiration date on its private label credit cards. However, we do close an account for inactivity after 24 months without a balance. In order to maintain the internal flexibility to set reasonable inactivity periods based on our own customer experience, we would urge the Board to adopt a very narrow definition of what constitutes closing an account for failure to incur finance charges.

* * *

Once again, we appreciate the opportunity to comment on the ANPR. If you have any questions concerning our comments, or if we may otherwise provide assistance with respect to this issue, please do not hesitate to call me directly at (847) 564-6324.

Sincerely,

Julie A. Davenport
General Counsel - HSBC Retail Services